

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

1) DUNNIVEN ORLANDO PHELPS,)

Plaintiff,)

vs.)

1) AMANDA GANN,)

Defendant.)

Case No. 21-CV-365-GKF-JFJ

**PLAINTIFF’S OBJECTION TO DEFENDANT’S MOTION TO
DEPOSE PLAINTIFF’S EXPERT WITNESS**

COMES NOW, Dunniven Orlando Phelps, and respectfully submits his Objection to Defendant’s “Motion to Extend Deadline to Depose Plaintiff’s Expert Witness” (Dkt. #62), as follows:

1. On November 6, 2023, the undersigned took Defendant Amanda Gann’s deposition. During that deposition, counsel for Plaintiff inquired as to the specific reason(s) that her employment with Turn Key Health Clinics, LLC (“Turn Key”) was terminated on September 16, 2019. The undersigned specifically asked Ms. Gann if her treatment of Plaintiff, while he was housed in the Tulsa County Jail, was the -- or a -- cause of her termination. Remarkably, Nurse Gann claimed that she could not recall.

2. Getting no answers from Nurse Gann, counsel for Plaintiff requested a Rule 30(b)(6) deposition of Turn Key Health Clinics, LLC. The Rule 30(b)(6) deposition notice included several “areas of inquiry”. For instance, one of the topics to be covered was “[t]he specific event(s) and reason(s) that led to or caused Turn Key to terminate Amanda Gann, RN’s employment on or about September 16, 2019.”

3. The Rule 30(b)(6) deposition was set for November 30, 2023.

4. Counsel for Plaintiff reasonably expected the Turn Key 30(b)(6) witness to be fully prepared to address this relatively simple topic. No such luck. The testimony from the Turn Key 30(b)(6) witness was only slightly more enlightening than the testimony from Ms. Gann. The witness had no personal knowledge concerning Ms. Gann's termination and did very little to obtain any knowledge on the subject.

5. It was at this time that counsel for Plaintiff proposed a fair resolution. That is, Plaintiff would gladly agree to an extension of the expert discovery deadline, as previously requested, if Defendant would agree to extend fact discovery for the limited purpose of Plaintiff taking the depositions of the two Turn Key supervisors involved in the decision to terminate Ms. Gann. Counsel for Defendant refused this fair proposal.

6. Then, on December 1, 2023, Defendant filed her "Motion to Extend Deadline to Depose Plaintiff's Expert Witness" (Dkt. #62). As part of the Motion, Defendant seeks an extension of the "date by which Defendant must depose Plaintiff's expert witness...." But the Third Amended Scheduling Order contains no such specific deadline. There was only the December 1, 2023 discovery cutoff. *See* Dkt. #59.

7. In the Motion, Defendant requests an order requiring the deposition of Plaintiff's expert to take place by January 10, 2024. *See* Dkt. #62. Moreover, the Motion, if granted, would only apply to Defendant's deposition of Plaintiff's expert and would not accommodate Plaintiff's prior request to depose *Defendant's* expert. *Id.*

8. The one-sided and narrow "extension" proposed in Defendant's Motion is inequitable. If the discovery cutoff is to be extended, it should be extended for all purposes. And even if the Court should decide to only extend *expert* discovery, this extension should apply to Defendant *and* Plaintiff. In other words, if a limited expert discovery extension is granted, at a minimum, Plaintiff should be permitted to depose Defendant's expert witnesses as well.

Respectfully submitted,

SMOLEN & ROYTMAN

/s/Robert M. Blakemore

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December 2023, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all ECF registrants who have appeared in this case.

/s/ Robert M. Blakemore